

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KAREN DAVIS,

Plaintiff,

-v-

ORDER

02-CV-6628L

VERIZON WIRELESS,

Defendant.

On September 21, 2005, defendant Verizon Wireless filed a motion to strike the affidavit of Tonie Porter, which affidavit plaintiff submitted to the Court more than five months after her response to defendant's motion for summary judgment was due to be filed, and more than two weeks after the Court heard argument in this case.

The Court recognizes defendant's frustration with plaintiff's exceedingly untimely submission of this evidence. Nevertheless, I find that defendant has not shown that it suffered prejudice by submission of this affidavit. Ms. Porter was identified as a potential witness in the case in plaintiff's response to Verizon's Interrogatories. Further, in deciding defendant's motion for summary judgment, the Court will consider the arguments defendant set forth in its motion to strike concerning the weight to accord the affidavit.

Defendant's motion to strike (Dkt. #44), therefore, is denied. The Clerk of the Court is directed to file the affidavit of Tonie Porter as part of Dkt. #36, plaintiff's opposition to defendant's motion for summary judgment.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 23, 2005.